

**Slovenko v Hs Enviormax Heating & Cooling Corp.**

2019 NY Slip Op 33617(U)

December 9, 2019

City Court of Peekskill, Westchester County

Docket Number: SC-216-19

Judge: Reginald J. Johnson

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PEEKSKILL CITY COURT  
COUNTY OF WESTCHESTER: STATE OF NEW YORK

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Glenn Slovenko,

DECISION & ORDER

Plaintiff,

--against--

**Index No. SC-216-19**

HS Enviormax Heating and Cooling Corp., Small Claims Part

Defendant.

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Appearances:

Glenn Slovenko, pro se

HS Enviormax Heating and Cooling, Corp., by Frank A. Catalina, Esq.

Hermelindo Salvar, owner and witness

Reginald J. Johnson, J.

This is a small claims action commenced pursuant to Uniform City Court Act (UCCA), Article 18-A. The plaintiff appeared pro se and the defendant appeared by Hermelindo Salvar, and by Frank A. Catalina, Esq. After unsuccessful settlement negotiations, this matter proceeded to a bench trial.

In deciding this matter, the Court considered the testimony of the parties and the following exhibits: copy of Manufacturer’s specifications with photo of installed pipe on opposite side (Plt’s “1”), copy of email correspondence between parties (Plt’s “2”), photo of gas line installation

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(Plt's "3"), photo of pre-install condition of pipes (Plt's "4"), photo of post-installation condition of pipes (Plt's "5"), photo of post reconnection by Sila (Plt's "6"), photo of disconnected switch (Plt's "7"), paid bill (Plt's "8"), estimate (Plt's "9"), and contract (Plt's "10").

### Procedural History

On April 18, 2019, the plaintiff commenced this Small Claim action against the defendant for breach of contract.<sup>1</sup> The case was scheduled for first appearances on July 1, 2019, but adjourned to July 31, and then to September 10. On September 10, the matter was adjourned to October 8 for trial. On October 8, the parties were unable to settle this case, so this matter proceeded to bench trial. After both sides rested, the Court reserved its decision.

### Facts

Plaintiff alleges that he engaged the services of the defendant for the purpose of replacing his oil burning boiler with a gas burning boiler (Plt's "10"). Plaintiff alleges that during the installation process, the defendant connected a 1/2" gas line to an existing 3/4" gas line in violation of the manufacturer's instructions (Plt's "1" and "3"), which resulted in a lack of heat in the basement due to an insufficient amount of pressure in the gas line. In addition, the plaintiff claims that the defendant

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<sup>1</sup> On The Application To File Small Claims form, the Plaintiff noted that he is suing for "[r]efund on defective work, labor, services." In the "Briefly state reason for claim" section, Plaintiff alleged that the defendant "[i]nstalled new boiler incorrectly; Boiler spec notes 3/4" gas line required, [but] 1/2" [was] installed (local supply source was 3/4") [plus] the RB-122-E Low Water Cut-Off was disconnected and not reconnected."

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disconnected the low water cut off valve which prevented water from circulating in and cooling the hot water heater (Plt's "7"). This allegedly caused the hot water heater to leak. Plaintiff claims that he communicated with the defendant on several occasions about the problem and requested that he return to correct the issue, even if additional payment was required (Plts "2"). According to the plaintiff, the defendant never returned to remedy the issues, so he engaged the services of Sila—a heating and air conditioning company. After Sila inspected the boiler and gas line and informed plaintiff of the issues, plaintiff called the defendant and informed him of Sila's findings. Plaintiff claims that defendant informed him that since he allowed a third party (Sila) to inspect the boiler and gas line, defendant's warranty with plaintiff was voided by Sila's inspection (Plt's "2").

Plaintiff engaged the services of Sila to correct the boiler and gas line—specifically, Sila removed the ½" gas line and connected a ¾" gas line to the existing ¾" gas line (Plt's "8"). In addition, Sila reconnected the low water cut off valve which allowed water to circulate and cool the hot water heater (Plt's "6"). Plaintiff paid Sila \$2,791.75 (Plt's "8"), of which he is only seeking \$1,997.18 from the defendant.

Defendant Hermelindo Salvar, the owner of Enviormax, testified that Enviormax is a heating and air conditioning company that has been in business for 13 years. Salvar stated that he removed the plaintiff's oil burner and replaced it with a gas burner, and that he did not use a ½" gas

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line during the installation. Salvar stated that he added sections of the gas line to the current system, but that he did not remember if he installed the same inch gas line to the existing gas line. Salvar further claims that plaintiff never afforded him the opportunity to inspect and remedy the problems with the new boiler and gas line.

On cross examination, plaintiff conceded that after Sila did the corrective work, the pressure in the gas line was still not adequate, until Con Edison came in and increased the pressure to specification. Plaintiff further stated that he only gave defendant six (6) days to get the work corrected before he sought to reverse the charges, yet he did not notice the pressure issue with his gas line until nine (9) months after defendant completed the work. Lastly, plaintiff stated that Sila replaced ten (10) feet of ½” gas line with ¾” gas line.

#### Discussion

“A small claims court is generally ‘not bound by statutory provisions or rules of practice, procedure, pleading or evidence,’ and all that is required is that proceedings be conducted ‘in such manner as to do substantial justice between the parties according to the rules of substantive law’ (CCA 1804)” (*Buvis v. Buvis*, 38 Misc.3d 133[A] [App Term, 2d 11<sup>th</sup> & 13<sup>th</sup> Jud Dists [2013]; see also, *Williams v. Roper*, 269 A.D.2d 125, 126 [1<sup>st</sup> Dept. 2000]). Further, the determination of a trier of fact as to issues of credibility is given substantial deference, as a trial court’s opportunity to observe and evaluate the testimony and demeanor

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of the witnesses affords it a better perspective from which to evaluate their credibility (see, *Vizzari v State of New York*, 184 A.D.2d 564 [2d Dept. 1992]; *Kincade v. Kincade*, 178 A.D.2d 510, 511 [2d Dept. 1991]). Unless the fact-finding trial court's conclusions could not be reached under any fair interpretation of the evidence, its determinations are usually left undisturbed by appellate courts (see, *Claridge Gardens v Menotti*, 160 A.D.2d 544 [1<sup>st</sup> Dept. 1990]). This standard applies with greater force to judgments rendered in the Small Claims Part of the court (*Williams v. Roper*, 269 A.D.2d at 126).

The elements of a cause of action for breach of contract are (1) the existence of a contract between plaintiff and defendant, (2) performance by plaintiff, (3) defendant's failure to perform, and (4) resulting damage (see, *Palmetto Partners, L.P. v. AJW Qualified Partners, LLC*, 83 A.D.3d 804 [2d Dept. 2011]; *JP Morgan Chase v. J.H. Elec. of New York, Inc.*, 69 A.D.3d 802 [2d Dept. 2010]; *Dee v. Rakower*, 112, A.D.3d 204 [2d Dept. 2013]). In the case at bar, there is no dispute that the parties entered a legally binding contract for the removal of the existing oil boiler and the installation of a new gas boiler (Plt's "10"). The dispositive issue in this case is whether the defendant failed to properly install the gas boiler by installing an ½" gas line to an existing ¾" gas line and by disconnecting the low water cut off valve to the hot water heater (which prevented water from cooling the hot water heater), all of which resulted in the hot water heater leaking and unable to radiate

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sufficient heat.

The evidence submitted at this trial indicated that the proper gas line connection required a  $\frac{3}{4}$ " gas line, as noted in the manufacturer's specifications (Plt's "1"). The evidence clearly showed that the defendant connected a  $\frac{1}{2}$ " gas line to an existing  $\frac{3}{4}$ " gas line in contravention of the manufacturer's specifications (Plt's "1" and "3"). Further, the evidence showed that the defendant disconnected the low water cut off valve to the hot water heater which caused it to overheat, to leak water, and to fail to radiate enough heat to warm the basement area (Plt's "7"). The defendant was given an ample opportunity by the plaintiff to remedy the problems he created when he installed the gas boiler, but he claimed that plaintiff voided the warranty when he contracted with Sila to inspect defendant's work, so defendant refused to address the issues (Plt's "2"). Sila inspected the defendant's work and determined that defendant attached a  $\frac{1}{2}$ " gas line to an existing  $\frac{3}{4}$ " gas line (Sila replaced the  $\frac{1}{2}$ " gas line with  $\frac{3}{4}$ " gas line) and disconnected the low water cut off valve (Sila reconnected the low water cut off valve) (Plt's "8"). The Court finds that defendant breached the contract between the parties and that the breach damaged the plaintiff.<sup>2</sup> The plaintiff paid Sila \$2,791.75 to replace three (3) pumps, to replace the spiral vent, to replace the gas line, and to wire

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<sup>2</sup>The Court is not dissuaded from its findings that defendant's actions were the proximate cause of plaintiff's damages, even though plaintiff conceded that the pressure in the gas line did not reach the proper level after Sila's repair, but only after Con Edison came to the premises and increased the pressure in the gas line to the proper level.

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the low water cut off (Id.). The itemized cost of restoring the gas line to 3/4” and wiring the low water cut off valve by Sila was \$1,860.00 plus taxes in the sum of \$155.77 (8.375%)<sup>3</sup> for a total cost of \$2,015.77 (Id). The defendant argued that the cost of plaintiff’s repairs should have been considerably lower than the judgment amount he seeks. Itemized paid bills are deemed prima facie evidence of the reasonable value and necessity of such service and repairs (see, *Murov v. Celentano*, 3 Misc.3d 1 [App Term 2d Dept. 2003]; UCCA §1804A). However, plaintiff is only seeking \$1,997.18 from the defendant. Therefore, the Court awards the plaintiff a money judgment in the sum of \$1,997.18 against the defendant plus \$20.00 costs for a total judgment in the sum of \$2,017.18.

Based on the aforesaid, it is

Ordered that the plaintiff is awarded a money judgment against the defendant in the sum of \$1,997.18 plus \$20.00 costs for a total judgment in the sum of \$2,017.18;

This constitutes the decision and order of the Court.

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Hon. Reginald J. Johnson  
Peekskill City Court Judge

DATED: Peekskill, New York  
December 9, 2019

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<sup>3</sup> The current local tax rate in Eastchester, New York, where plaintiff resides is 8.375%.



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